

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND

SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA No.5205/Mum/2014(A.Y. 2007-08)

ITA No.5206/Mum/2014(A.Y. 2010-11)

The Income Tax Officer-24(3)(2),
Room No.704, C-11, Pratayaksha Kar Bhavan,
Bandra Kurla Complex,
Bandra (E), Mumbai 400051

..... Appellant

Vs.

M/s. Neeta Enterprises,
141, Gundecha House,
Jawahar Nagar, Goregaon(W),
Mumbai 400 062
PAN:AACFN 4947M

.... Respondent

Appellant by : Shri N.P.Singh
Respondent by : Shri Vimal Puniya

Date of hearing : 18/10/2016
Date of pronouncement : 21/10/2016

ORDER

PER G.S.PANNU,A.M:

The captioned appeals, filed by the Revenue relates to the same assessee for assessment years 2007-08 &2010-11. The issues involved in these appeals are common, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. We may refer to the appeal for assessment year 2007-08 as the lead case in order to appreciate the controversy. This appeal is directed against an order passed by CIT(A)-34, Mumbai dated 21/05/2014, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short 'the Act') dated 22/03/2013. The Grounds of appeal raised by the Revenue in this appeal read as under:-

"1) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction under section 80IB(10) of the I.T. Act ignoring the fact that the approval of the local authority was obtained on 28/11/1992, i.e. much before 01.10.1998, the date on or after which the project approved were eligible for deduction under section. 80IB(10).

2) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction under section. 80IB(10) of the I.T. Act ignoring the fact that it has not obtained completion certificate from local authority before 31.03.2008 which is mandatory as per explanation (ii) to Section 80IB(10) of the Act."

3. Before us, it was a common ground between the parties that both the issues raised in this appeal have been decided by the Tribunal in assessee's own case in earlier years in favour of the assessee. In this background, in order to impart completeness to the order, we proceed to make the following discussion.

4. Assessee before us is a partnership firm, which is engaged in the business of builders and developers. In the impugned assessment finalized under section 143(3) r.w.s 263 of the Act dated 22/2/2013, the Assessing Officer disallowed the claim of deduction of Rs.13,50,93,090/- made under section 80IB(10) of the Act following the stand of the Assessing Authorities in the other assessment years. Before the CIT(A), assessee pointed out that the deduction under section 80IB(10) of the Act has been wrongly denied by the Assessing Officer based on the past history because in other assessment years the CIT(A) has already allowed the claim of the assessee. In this view of the

matter, the CIT(A) has since allowed the claim of the assessee, against which Revenue is in appeal before us.

5. In so far as, the Ground of appeal No.1 is concerned, the dispute relates to the date 'commencement' of the housing project for the purposes of the claim of deduction under section 80IB(10) of the Act. This aspect of the controversy stands covered by the decision of the Tribunal dated 04/06/2014 vide ITA No.2898/Mum/2010(for assessment year 2006-07) & others dated 04/06/2014. The conclusion of the Tribunal in this regard is as under:-

" 18. In the present case also no expenditure, whatsoever, has been shown to be incurred on the housing project for which approval was obtained by the assessee after entering into Development Agreement, i.e. on 10th July, 2003. The expenditure incurred by M/s. Gas Property Developers were not on the housing project approved by the municipal corporation on the revised layout.

19. plan submitted by the assessee after entering into development agreement. The expenditure incurred by M/s. Gas Property Developers was on repair of the boundary wall. Therefore, on the basis of the earlier approval obtained by M/s. Gas Property Developers, which has already lapsed, and the expenses were on account of repair of boundary wall the project cannot be stated to have been commenced before 01.10.1998. Therefore, we find no infirmity In the findings recorded by the learned CIT(A) that the AO was wrong in holding that the housing project of the assessee had commenced before 01.10.1998. We uphold his order. Since the facts and circumstances in all the three cases are identical, all the appeals filed by the Revenue are dismissed."

6. Considering the aforesaid finding of the Tribunal, we find no reason to interfere with the decision of the CIT(A), which is in consonance with the order of the Tribunal. Thus, in so far as Ground of appeal No.1 is concerned, the Revenue fails.

7. The issue raised in Ground of appeal No.2 relates to the date of completion of the project and on this aspect the Ld. Representative for the assessee explained that the issue stands covered in favour of the assessee by

the order of the Tribunal for assessment year 2009-10 vide ITA No. 1652/Mum/2013 dated 9/10/2015. It was also brought out that in assessment year 2011-12 also, the Tribunal vide ITA No. 6002/Mum/2014 dated 23/09/2016 has decided the issue in favour of the assessee.

8. In this context, it is noticed that the objection of the Assessing Officer was that since the project was not completed before 31/03/2008, the deduction under section 80IB(10) of the Act could not be allowed. As per the CIT(A)'s decision in para 3.3, it is seen that according to her, the condition regarding completion of the housing project before 31/3/2008 was not applicable in this case, as the project was approved prior to the amendment made in the statute relating to the due date of completion. Further, the CIT(A) records a finding in paras 3.4.4 and 3.4.5, that in any case; assessee has completed the construction work in all respects before 31/8/2008 and obtained the occupancy certificate also. Even before us, the Ld. Representative for the assessee pointed out that housing project consisted of seven buildings and in respect of A,B,C,D,E,F and G wings occupancy certificates were obtained and possession handed over to flat purchasers who started residing in the allotted flats. It is pointed out that the occupancy certificate issued by the Local Authorities clearly proves that the work in respect of the habitable area of the housing project was complete in all respects. All these facts have not been controverted before us, and the same have been duly considered and accepted by the Tribunal in its order dated 23/9/2016(supra) for assessment year 2011-12.

9. In view of the precedent in the case of assessee for assessment year 2009-10(supra) and assessment year 2011-12(supra), wherein identical situation in relation to the very same project has been considered, we find no

reason to interfere with the decision of the CIT(A) in allowing the claim of the assessee, which is in line with the aforesaid precedents. As a consequence, on this aspect also, the order of the CIT(A) is affirmed and Revenue fails.

10 In the result, appeal of the Revenue for assessment year 2007-08 is dismissed.

11. It was a common point between the parties that the facts and circumstances in ITA No. 5206/Mum/2014 for assessment year 2010-11 are *pari-materia* to those considered by us in ITA No. 5205/Mum/2014 for assessment year 2007-08; thus, our decision therein shall apply *mutatis mutandis* in the appeal for assessment year 2010-11 also.

12. In the result, appeals of the Revenue for both the assessment years are dismissed.

Order pronounced in the open court on 21/10/2016

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOCUNTANT MEMBER

Mumbai, Dated 21/10/2016

Vm, Sr. PS

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai